

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

TONY R. MILAM

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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Case No. 4:03CV00025

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**ORDER**

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By: Jackson L. Kiser

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Senior United States District Judge

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Before me is the Report and Recommendation of the United States Magistrate Judge recommending that an order enter awarding plaintiff's counsel the sum of \$9,846.00 as sought in his petition for an award of an attorney's fee under 42 U.S.C § 406(b). The Commissioner of Social Security filed a timely objection to the Report and Recommendation, and the plaintiff has not responded in the intervening month. I reviewed Judge Crigler's Report and Recommendation and the Commissioner's objections.

For the reasons stated in the accompanying Memorandum Opinion, I reject Judge Crigler's Report and Recommendation, but find that plaintiff's counsel is entitled to a fee of \$6,300.00 for his services before the court. The Commissioner is ordered to provide this amount to plaintiff's counsel from the remaining portion of plaintiff's withheld backpay benefits.

The Clerk is directed to send a copy of this Order and the accompanying Memorandum Opinion to the Magistrate Judge and all counsel of record.

Entered this 29<sup>th</sup> day of August, 2005.

s/Jackson L. Kiser  
Senior United States District Judge